

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

The Inclusive Communities Project, Inc.,
Plaintiff,

v.

The United States Department of
Housing and Urban Development,
Defendant.

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Civil Action No: 12-2522

COMPLAINT

Summary of the claim

1. Plaintiff filed a Freedom of Information Act request with HUD. HUD responded that the FOIA request “is granted in full.” Despite HUD’s statement, the records actually provided did not include many of the records requested. HUD did not respond to plaintiff’s written request for the withheld records. This suit is brought for an order requiring HUD to produce the records that HUD did not actually produce.

Jurisdiction

2. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B), the Freedom of Information Act [FOIA].

3. Plaintiff, The Inclusive Communities Project, Inc. [ICP] is a Dallas based fair housing organization which works to create and maintain racially and economically inclusive communities and to expand fair and affordable housing opportunities for low income families. ICP provides the counseling and other forms of assistance to low income families seeking to utilize their Housing Choice Voucher to move into low-poverty, non-minority concentrated areas

throughout the Dallas metropolitan area.

4. The defendant is the United States Department of Housing and Urban Development [HUD]. HUD is an executive agency of the United States of America.

5. A FOIA request to HUD was submitted on behalf of ICP on September 9, 2011, by facsimile delivery. The FOIA request reasonably described the records requested and was made in accordance with the HUD published rules stating the time, place, fees (if any) and procedures to be followed in making a request for records.

6. The September 9, 2011 FOIA request on behalf of ICP sought detailed sections of the HUD records for each Housing Choice Voucher located in the counties of Collin County, Dallas County, Denton County, Ellis County, Hunt County, Kaufman County, and Rockwall County that was in use as of May 1, 2011. The request sought the public records from the HUD Form HUD-50058 that are electronically filed by the housing authorities and housing agencies administering Housing Choice Vouchers in those counties. The FOIA request specifically listed the records from the HUD form to be produced and asked that it be provided in electronic format since this is the format in which HUD maintains the records. The request informed HUD that it did not seek the participants' names and addresses. ICP informed HUD that it was willing to pay fees for the request up to \$1,000 and if the fees exceeded that amount then to notify the requestor first.

7. HUD acknowledged receiving the September 9, 2011 FOIA request from ICP in an electronic mail dated September 20, 2011. In the email acknowledgment, HUD assigned the case number 11-FI-HQ-02701 to ICP's FOIA request.

8. HUD also acknowledged receiving the September 9, 2011 FOIA request from ICP by

written letter dated September 23, 2011. In the September 23, 2011 letter HUD stated that “the Department will comply with your request to the extent permissible by law.” HUD estimated that it “may take approximately 30 days to complete processing of your request.” HUD referred to the FOIA request as “FOIA Control Nos.: 11-FI-HQ-02701 and FI-486710.”

9. By letter dated April 13, 2012, HUD stated that the Freedom of Information Act Request FOIA Control Nos.: 11-FI-HQ-02701 and FI-486710 “is granted in full. Enclosed is a CD-ROM in response to your request.”

10. HUD did not produce the following requested records for each Housing Choice Voucher located in the Dallas, Texas area counties of Collin County, Dallas County, Denton County, Ellis County, Hunt County, Kaufman County, and Rockwall County that was in use as of May 1, 2011:

1a. The Agency name (1a).

2n. Other special programs.

3k. Race (for the Head of Household member no. 01).

3m. Ethnicity (for the Head of Household member no. 01).

3t. Total number in household.

6f. Column total Cash value of asset.

7i. Total annual income 6j + 7g.

12a. Number of bedrooms on Voucher (12a).

12h. Owner name (12h).

12s. Total HAP (12s).

11. HUD did not produce the following requested records for each HA (housing authority

or housing agency) administering Housing Choice Vouchers located in any census tract in the Dallas, Texas area counties of Collin County, Dallas County, Denton County, Ellis County, Hunt County, Kaufman County, and Rockwall County were not included on the CD_ROM or otherwise produced:

- the % Minority or pct_minority for the Families in each census tract,
- the % Black or pct_black for the Families in each census tract,
- the % Native American or pct_native_american for the Families in each census tract,
- the % Asian or Pacific Islander or pct_asian, % Asian or Pacific Islander for the Families in each census tract,
- the % Hispanic or pct_hispanic for the Families in each census tract,
- Owners for All Families with Children Units by 1-5, 6 - 10, 11- 20, 21- 50, 51 - 100, Over 100, and
- Owners for New Families with Children Units by 1-5, 6 - 10, 11- 20, 21- 50, 51 - 100, Over 100.

12. More than thirty days (excepting Saturdays, Sundays, and legal public holidays) have passed since HUD's receipt of the request. HUD did not produce the listed records within thirty days of the September 23, 2011, letter from HUD estimating that it would take thirty days to complete processing of the request. Over 60 days have passed since HUD stated it was granting the request in full and providing the records. The listed records have not been produced pursuant to the request.

13. HUD has not made the listed records available for inspection and copying by ICP.

Claim for relief.

14. HUD's refusal to produce the records violates 5 U.S.C. § 552(a)(2).

Prayer for relief

Plaintiff requests the following relief:

A. an order enjoining HUD from withholding the agency records and requiring HUD to produce the agency records,

B. an award of reasonable attorney fees,

C. an award of other litigation costs if any such costs are incurred.

Respectfully Submitted,

/s/ Michael M. Daniel
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Attorney for Plaintiff

CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Inclusive Communities Project, Inc.

(b) County of Residence of First Listed Plaintiff Dallas
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Daniel & Beshara, P.C.
3301 Elm Street
Dallas, TX 75226 (214) 939-9230

DEFENDANTS

The United States Department of Housing and Urban Development

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
5 USC 552(a)(2) Freedom of Information Act

Brief description of cause:
Violation of Freedom of Information Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S)**PENDING OR CLOSED:**

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

7/26/2012

SIGNATURE OF ATTORNEY OF RECORD

Michael V. Daniel

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____